

RECEIVED

MAY 29 1998

FCC MAIL ROOM

In the Matter of

Federal-State Joint Board on Universal Service

To: The Commission

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

)  
) CC Docket No. 96-45

) CC Docket No. 97-160

**REPLY COMMENTS OF THE  
SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION**

The South Dakota Independent Telephone Coalition ("SDITC") is an organization representing the interests of numerous independent, cooperative and municipal local exchange carriers. Attached is a list of the current SDITC members. All of the companies constitute "rural telephone companies", as defined by 47 U.S.C. § 3(37).

SDITC submits these comments in response to the Commission's Public Notice released herein on April 15, 1998. Although, to our understanding, this proceeding is restricted to determining what methodology will be used by the Commission for determining high cost support for non-rural carriers, some of the proposals offered for a high cost support methodology are intended to apply to both "non-rural" and "rural" carriers. As a result of these various proposals and based on our speculation that any decisions made herein regarding the methodology to be applied to non-rural carriers will likely have at least some effect on later decisions regarding a methodology for rural carriers, we feel the need to comment at this time.

With these comments, SDITC wishes to note its concurrence in the comments filed in this matter by the Rural Telephone Coalition ("RTC") and the Western Alliance. In addition, we express our support for the Commission's commitment to reconsider the high cost support methodology initially released with its Universal Service Order released on May 8, 1997 and offer comment regarding those elements of the methodology which we believe must be corrected to ensure compliance with the universal service requirements and principles established in Section 254 of the Telecommunications Act of 1996 (hereinafter referenced as the "Federal Act" or "the Act").

# **1. Concurrence in RTC and Western Alliance Comments.**

As noted, comments were submitted in this matter by the RTC and the Western Alliance.<sup>1</sup> Both the RTC and the Western Alliance oppose the proposal offered by the NARUC Ad Hoc Working Group ("the Ad Hoc Group Proposal"), which recommends adoption and implementation by January 1, 1999, of a new universal service support mechanism applicable to both non-rural and rural carriers. SDITC agrees with RTC and the Western Alliance and believes the Commission should reject the Ad Hoc Group Proposal. Also, we oppose generally any other untested plans that similar to the Ad Hoc Group Proposal attempt to impose experimental cost proxy models on rural carriers at this time or later.

With respect to the Ad Hoc Group Proposal specifically, SDITC finds it disturbing in a number of respects. First, we believe it is terribly deficient for its failure to recognize any distinction at all between rural and non-rural carriers. The plan proposes that a single federal support program should apply to both rural and non-rural companies without regard to their size -- that a single system should apply in both rural and non-rural areas.<sup>2</sup> Absent some recognition of the differing economies of scale and scope between rural carriers and those that are non-rural, how can supporters of the proposal reasonably contend that the cost proxy model used would accurately target universal service support. Distinctions between rural and non-rural carriers in the provisioning of universal service support have long been part of our national policy and it would be irresponsible now to ignore the basis for these distinctions. As indicated by the RTC:

[T]he bifurcation between rural and non-rural telcos is consistent with the Act's separate definition and safeguards for rural telephone companies. Sections 3(37), 214(e); and 251(f) of the Act, among others, recognize that rural differences warrant separate consideration. Such bifurcation in universal service proceedings is reasonable and consistent with the Act's recognition that regulation of rural carriers must reflect their different circumstances.<sup>3</sup>

Most of the models that have been submitted assume a forward-looking cost model. The use of Forward-Looking Economic Cost (FLEC) models is appropriate only so long as the Commission explicitly recognizes that the suitability of forward-looking costing for non-rural companies, and its suitability for rural companies, are entirely unrelated because of the enormous differences among rural companies. Forward-looking costing has not been shown to account for the diversity of rural companies and conditions. Even US WEST, a major designer and advocate for forward-looking models that has spent millions of dollars and thousands of person-hours in developing

<sup>1</sup> *Comments of the Rural Telephone Coalition* dated May 15, 1998; and *Comments of the Western Alliance* dated May 15, 1998.

<sup>2</sup> *High Cost Support: Alternative Distribution Proposal*, dated April 27, 1998, p. 16.

<sup>3</sup> RTC Comments, p. 7.

a cost proxy model, says (Attachment II, p. 3) that it will be necessary to conduct several years of hands-on experimentation with forward-looking cost models as applied to non-rurals before the method could responsibly be applied to a rural telco.<sup>4</sup>

So far, no forward looking proxy cost plan has emerged that could reasonably be characterized as providing "sufficient", "specific" or "predictable" federal support to prevent increases in (a) rural rates, (b) rates in particularly rural states, or (c) support mechanisms in states without extensive low cost urban populations. Such increases threaten to destroy the reasonable rural and urban rate and service parity the law demands.<sup>5</sup>

As further explained by the Western Alliance:

No proxy model conceivable at this time can fairly and accurately consider and treat the unique and varying circumstances of the approximately 1,100 rural carriers serving the nation. Rural telephone companies were not constructed according to a common Bell system model, but rather were developed by different entities and different managements at different times with different equipment from different vendors across different terrain to serve the differing needs of different types of communities and outlying areas. As a result of this variability among rural carriers, any attempt to impose a "one size fits all" proxy model can only create arbitrary "winners" and "losers" of USF cost recovery. This will result in reductions of services and investments in the rural areas served by the "losers," for rural telephone companies have little cushion or flexibility to withstand sudden or substantial changes in their interstate revenues and cost recovery.<sup>6</sup>

SDITC, like RTC and the Western Alliance, opposes any action by the Commission in this process to significantly change the universal service system that is currently in place for providing high cost support to rural carriers. The Commission has established a separate process that is intended to carefully address issues surrounding USF reform for rural carriers which includes, in part, review of the issues by a Rural Task Force. This process must be given an opportunity to work and no major changes to universal service mechanisms should be prematurely forced on rural carriers. As Chairman Kennard in addressing universal service reform for rural carriers has remarked, "if it ain't broke, don't fix it" and the Commission "should only make changes when it is right to make changes and not before."

SDITC also sees the Ad Hoc Group Proposal as being out-of-step with the federal law inasmuch as it proposes to use "state average costs" as the basis for determining federal support eligibility and essentially would convert the federal high cost support system into a state block grant program. Section

---

<sup>4</sup> RTC Comments, p. 13.

<sup>5</sup> RTC Comments, p. 2.

<sup>6</sup> Western Alliance Comments, pp. 7 & 8.

254 of the federal Act establishes a number of universal service principles, among which include the following:

- Quality services should be available at just, reasonable, and affordable rates;
- Access to advanced telecommunications and information services should be provided in all regions of the nation;
- Consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange and advanced services, that are reasonably comparable to those services provided in urban areas and that are available at rates reasonably comparable to rates charged for similar services in urban areas; and
- There should be specific, predictable and sufficient federal and state mechanisms to preserve and advance universal service.

In addition, the Act in subsection 254(a) specifically directs the establishment of a federal universal service definition and expressly provides that the definition is to be supported by “Federal universal service support mechanisms”.

It is clear that these referenced provisions are intended to establish a national universal service policy and reflect a national commitment to the preservation and advancement of universal service. The Ad Hoc Group Proposal seems less interested in true universal service and primarily directed toward minimizing support flows between low-cost and high-cost states. The proposal relies too heavily on the states to achieve the federal universal service goals, relegating the primary responsibility to ensure affordable and comparable rates and services between rural and urban customers to the state jurisdictions.

As RTC has noted, “proposals that would require states to furnish the majority of federal universal service support, with federal contributions existing as a backdrop, do not reflect the law passed by Congress. Nor do plans that seek to minimize the flow of funds between high cost and low cost states. . .”<sup>7</sup>

By basing the determination of federal support levels on the proposed state-average costs (p. 17), the Ad Hoc plan effectively substitutes an imaginary state-to-state exchange of funds for the federally mandated national support mechanism. The design therefore lends itself to a discussion of state “winners” and “losers,” though

---

<sup>7</sup> RTC Comments, p. 3.

there exist no legal rationale for a federal universal service subject to the interests of low and high-cost states. The Commission should not allow the principle of “reasonably comparable rural and urban rates” to be transformed into a state-by-state comparison of each state’s average to the national average, with state discretion over any within-state support for comparability.<sup>8</sup>

While state involvement in the design of the federal definition and support mechanism is required by the Joint Board provision in Section 254(a) of the Act, the Joint Board and the Commission must comply with the statutory standards for federal support. The Ad Hoc Group Proposal effectively substitutes an extraneous standard for the mandates of Congress specified in the 1996 Act and would clearly fail to achieve the national and uniform universal service objectives of the Act.

SDITC joins with RTC and the Western Alliance and strongly urges the Commission to reject the Ad Hoc Group Proposal and other proposals offered that would apply to not only non-rural, but also rural carriers.

## **2. Reconsideration of USF Methodology Prescribed in the May 8th Report and Order.**

As noted, SDITC is pleased that the Commission has committed to a reconsideration of its 25/75 decision on federal universal service funding. A number of parties in response to the Public Notice have commented on the importance of reconsidering and changing that decision. In addition, comments have been submitted concerning other parts of the “four step” universal service funding methodology prescribed by the Commission’s first universal service order, Report and Order dated May 8, 1997, FCC 97-157.

With regard to the methodology as prescribed in the May 8th Report and Order, SDITC believes that in several respects, it violates the intent of Congress as embodied in the universal service principles stated in the federal Act. Those decisions that are contrary to the Act include: (1) the 25/75 decision which makes states responsible for 75 percent of the total universal service support required; (2) the decision to base contributions for federal high-cost support on only interstate revenues; and (3) the decision directing incumbent LECs to use any federal high-cost funding received to reduce or satisfy the interstate revenue requirement otherwise collected through interstate access charges.

SDITC agrees with John Staurulakis, Inc. (“JSI”) that

a plain reading of the Act, as well as the Commission’s own experience, dictates that the federal high-cost universal service support mechanism should represent a

---

<sup>8</sup> RTC Comments, pp. 14 & 15.

comprehensive solution to universal service in high-cost-to-serve areas nationwide, should not be dependent for its success on the independent actions of 50 separate state regulatory bodies, and should ensure that the vast majority of support mechanism's financial benefit be available in the intrastate jurisdictions to allow "... consumers in all regions of the Nation . . . [to] have access to telecommunications services and information services, that are reasonably comparable to those provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."<sup>9</sup>

From our perspective, the current USF methodology prescribed suggests the lack of any substantial commitment to a national universal service program, the type of program that is mandated by the Telecommunications Act of 1996. As JSI has indicated, if the current methodology is implemented, it would result in the administrative burden of 50 state high-cost funds, and would discriminate against high-cost, less densely populated states (such as South Dakota).

The above referenced Commission decisions are inconsistent with the federal law simply because they fail to take into account the different circumstances faced by states like South Dakota, and other states, that do not have millions of access lines or numerous metropolitan areas over which to spread universal service assessments. The new USF program, if it is to succeed, obviously must take into account these differences. Not all states have the same ability to internally support universal service goals.

**A. The Commission Should Reconsider and Reject its Proposed 25% Federal/75% State USF Mechanism.**

Regarding the Commission's 25/75 decision specifically, SDITC joins with RTC, the Western Alliance, the South Dakota Public Utilities Commission and other parties in asking that upon reconsideration it be rejected by the Commission..

The Commission decision to make states responsible for 75 percent of "federal" universal service support is contrary to the provisions of Section 254(b), and serves to distinctly disadvantage small and rural states that do not have the luxury of significant urban population bases on which to offset the costs of providing local service to high-cost rural customers. The 25-75 split represents a major departure from Congressional intent to create a national policy, and rather than actually building on the

---

<sup>9</sup> Comments of John Staurulakis, Inc., dated April 27, 1998, p. 2.

federal-state partnership in advancing universal service, such a bifurcated approach creates a major point of contention between the states and the federal government.<sup>10</sup>

Further, as stated in the Western Alliance comments:

The Commission's decision to burden the states with an unfunded mandate to furnish 75 percent of future Universal Service cost recovery will require substantial increases in local service rates and other intrastate charges in many states. Particularly in sparsely populated Western states, there is simply not a large enough telecommunications revenue base to fund a state mechanism sufficient to replace the 75 percent federal shortfall without substantial local rate increases. These rate hikes will render local service much less affordable, particularly for low-income residents in high-cost rural areas, and will endanger the Universal Service goals and results which the Commission, the states and the telephone industry have worked for decades to achieve.<sup>11</sup>

**B. The Commission should Establish a Federal Fund that is Based Upon Total National Telecommunications Revenues – Interstate, Intrastate and International.**

It is just as critical to actually achieving the universal service goals set forth in the federal Act, that the Commission reconsider and change its decision which limits the contributions collected for federal high cost support to interstate revenues.

As opposed to the support mechanisms established for the schools and libraries and rural health care, the Commission has determined that contributions required to support the high-cost universal service support mechanism should consist only of interstate and international retail revenues. This determination by the Commission results in a formula that severely penalizes high-cost rural states that do not have a significant population base and are without any major metropolitan centers. The effect of such a formula is that states like South Dakota are placed in a no-win situation. They are faced with the prospect of having to assess unbearable surcharges on a smaller intrastate revenue base, surcharges which themselves may threaten universal service, or they must concede that they will not be able to maintain universal service at the same level as other more populated states. In limiting its USF methodology to contributions from only interstate and international retail revenues (excluding intrastate revenues) the Commission has decided on a formula that significantly understates the potential revenue base and undermines the “national” perspective for universal service, as articulated by Congress in Section 254(b).<sup>12</sup>

---

<sup>10</sup> See JSI Comments, p.6.

<sup>11</sup> Western Alliance Comments, p.9.

<sup>12</sup> JSI Comment., p. 7.

SDITC agrees with the following statement of FCC Commissioner Rachel Chong which, as JSI has noted, illustrates the inherent conflict between the FCC's Order and Congressional intent. In a separate, part-concurring and part-dissenting statement to the FCC's May 8th, 1997, Report and Order, Commissioner Chong stated:

While I support our decision to decline to exercise the entirety of our authority as to some portions of the federal universal service program, I read the statute as standing for the proposition that Congress granted the Commission authority pursuant to Section 254 to set up a comprehensive universal service program . . . . As a result, I think it would be a better reading of Section 254 to allow the Commission to assess universal service contributions on the revenues (either interstate or intrastate) of interstate carriers, because it most accurately embraces the spirit of the national social programs (schools and libraries, rural health care, low income, rural, insular, high-cost) proposed or mandated in this section.

The Commission's decision regarding the revenue base from which such support is derived (interstate only for the "high-cost" and "low-income" universal service programs), like its decision regarding the percentage of universal service supported to be provided by the federal mechanisms (25%), is not in keeping with Congressional intent. In fact, these decisions, if implemented, will undermine the universal service principles specifically set forth by Congress to guide the Joint Board and the FCC in setting policies to preserve and advance universal service.<sup>13</sup>

So long as the Commission USF methodology adopted by the Commission limits high-cost assessments to only interstate revenues and also is limited to picking up a mere 25% of the total support needed, SDITC is led to the conclusion that there will be no true national universal service.

C. Federal Universal Service Support Should Not be Directed to Reduce or Eliminate Access Charges. :

In its Reply Comments filed in CC Docket No. 80-286, dated January 22, 1998, SDITC addressed the apparent Commission determination that any federal support received by incumbent LECs should be directly assigned to the interstate jurisdiction and be used to reduce the interstate revenue requirement for switched access services. We reiterate at this time our position on the issue concerning this proposed use of federal universal service support and would refer the Commission back to our earlier comments.

If the proposal requiring that all universal service support received out of the federal jurisdiction be used to offset interstate access revenue requirements is adopted by the Commission, again, such

---


<sup>13</sup> See JSI Comments, p. 2.

action would be out-of-line with the universal service objectives and requirements contained in the federal Act. Adoption of this proposal would also excessively shift universal service obligations to the states and would violate the Section 254 provisions. The goal of universal service is to provide support to rural and high cost areas and to ensure directly that the rates for basic telecommunications services remain affordable and comparable between rural and urban consumers. The goal should not be limited to merely passing on rate reductions to interexchange carriers.

### **3. Conclusion.**

SDITC urges the Commission to give consideration to these comments in reviewing the various USF methodology proposals offered in this proceeding. By taking action consistent with these comments, we are confident that the Commission will, in fact, implement a system that is capable of preserving and advancing universal services on a national basis consistent with the federal Act.

Dated this 28th day of May, 1998.

  
Richard D. Coit, Executive Director and  
General Counsel

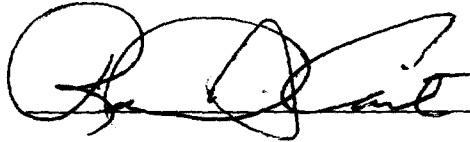
**Appendix A. Members of the**  
**South Dakota Independent Telephone Coalition**

Accent Communications, Inc.  
Armour Telephone Company  
Baltic Telecom Cooperative  
Beresford Municipal Telephone Company  
Bridgewater-Canistota Independent Tele.  
Brookings Municipal Telephone  
Cheyenne River Sioux Tribe Tele. Auth.  
East Plains Telecom. Inc.  
Faith Municipal Telephone  
Fort Randall Telephone Company  
Golden West Telecommunications Coop. Inc.  
Hanson Communications, Inc.  
Hanson County Telephone Company  
Heartland Communications, Inc.  
Interstate Telecomm. Coop., Inc.  
Intrastate Telephone Company  
James Valley Cooperative Telephone  
Jefferson Telephone Company  
Kadoka Telephone Company  
Kennebec Telephone Company  
McCook Cooperative Telephone Co.  
Midstate Telephone Company  
Mobridge Telecommunications Co.  
Mt. Rushmore Telephone Company  
Roberts County Telephone Coop. Assn.  
RC Communications, Inc.  
Sanborn Telephone Cooperative  
Sancom, Inc.  
Sioux Valley Telephone Company  
Splitrock Properties, Inc.  
Splitrock Telecom. Cooperative, Inc.  
State Line Telecommunications, inc.  
Stockholm-Strandburg Telephone Co.  
Sully Buttes Telephone Cooperative  
Tri-County Mutual Telephone Company  
Union Telephone Company  
Valley Cable & Satellite Comm., Inc.  
Valley Telecomm. Coop. Assn., Inc.  
Venture Communications, Inc.  
Vivian Telephone Company  
West River Coop. Telephone Company  
West River Telecomm. Cooperative

Western Telephone Company

### **CERTIFICATE OF SERVICE**

I, Richard D. Coit, do hereby certify that on this 29<sup>th</sup> day of May 1998, I have caused a copy of the foregoing Reply Comments of SDITC to be served via first class United States Mail, postage pre-paid, upon the persons listed on the attached service list.

A handwritten signature in black ink, appearing to read 'Richard D. Coit', is written over a horizontal line.

Richard D. Coit

\*William E. Kennard  
Federal Communications Commission  
Room 814  
1919 M Street, N.W.  
Washington, DC 20554

\*Gloria Tristani  
Federal Communications Commission  
Room 826  
1919 M Street, N.W.  
Washington, DC 20554

\*Michael K. Powell  
Federal Communications Commission  
Room 844  
1919 M Street, N.W.  
Washington, DC 20554

\*Harold Furchtgott-Roth  
Federal Communications Commission  
Room 802  
1919 M Street, N.W.  
Washington, DC 20554

\*Susan P. Ness  
Federal Communications Commission  
Room 832  
1919 M Street, N.W.  
Washington, DC 20554

\*A. Richard Metzger, Jr.  
Federal Communications Commission  
Room 500  
1919 M Street, N.W.  
Washington, DC 20554

\*Sheryl Todd  
Federal Communications Commission  
Room 8611  
2100 M Street, N.W.  
Washington, DC 20554

\*L. Charles Keller  
Federal Communications Commission  
Room 8918  
2100 M Street, N.W.  
Washington, DC 20554

(9 copies)

\*James Casserly  
Federal Communications Commission  
Room 832  
1919 M Street, N.W.  
Washington, DC 20554

\*Irene M. Flannery  
Federal Communications Commission  
Room 8922  
2100 M Street, N.W.  
Washington, DC 20554

\*Paul Gallant  
Federal Communications Commission  
Room 826  
1919 M Street, N.W.  
Washington, DC 20554

\*Kevin Martin  
Federal Communications Commission  
Room 802  
1919 M Street, N.W.  
Washington, DC 20554

\*International Transcription  
Services, Inc.  
1231 20<sup>th</sup> Street, N.W.  
Washington, DC 20036

Barry Payne  
Indiana Office of the Consumer  
Counsel  
Room N501  
100 North Senate Avenue  
Indianapolis, IN 46204-2208

Laska Schoenfelder  
Charles Bolle  
South Dakota Public Utilities  
Commission  
State Capitol  
500 East Capitol Street  
Pierre, SD 57501-5070  
(2 copies)

Martha S. Hogerty  
Public Counsel for the State  
of Missouri  
Room 250  
Harry S. Truman Building  
301 West High Street  
POB 7800  
Jefferson City, MO 65102

Lorraine Kenyon  
Alaska Public Utilities Commission  
Suite 400  
1016 West 6<sup>th</sup> Avenue  
Anchorage, AK 99501

Ann Dean  
Maryland Public Service  
Commission  
16<sup>th</sup> Floor  
6 Saint Paul Street  
Baltimore, MD 21202-6806

Bridget Duff  
Julia Johnson  
Mark Long  
Florida Public Service Commission  
Gerald Gunter Building  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0866  
(3 copies)

James B. Ramsey  
National Association of Regulatory  
Utility Commissioners  
1101 Pennsylvania Avenue, N.W.  
POB 684  
Washington, DC 20444-0684

Sandra Makeeff  
Iowa Utilities Board  
5<sup>th</sup> Floor  
Lucas State Office Building  
Des Moines, IA 50319

Philip F. McClelland  
Pennsylvania Office of  
Consumer Advocate  
1425 Strawberry Square  
Harrisburg, PA 17120

Brian Roberts  
California Public Utilities  
Commission  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

Patrick H. Wood III  
Roland Curry  
Public Utility Commission  
of Texas  
1701 North Congress Avenue  
POB 13326  
Austin, TX 78701  
(2 copies)

Deonne Bruning  
Nebraska Public Service  
Commission  
300 The Atrium  
1200 N Street  
POB 94927  
Lincoln, NE 68509-4927

David Baker  
Tiane Sommer  
Georgia Public Service  
Commission  
244 Washington Street, S.W.  
Atlanta, GA 30334-5701  
(2 copies)